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VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

Final report of the Ad Hoc Working Group of Experts on southern Africa

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Introduction

1. Since its establishment in 1967, the Ad Hoc Working Group of Experts on southern Africa has had its mandate extended and broadened through various resolutions and decisions of the Commission on Human Rights and the Economic and Social Council. In pursuance of its current mandate, the Working Group has carried out various inquiries into allegations of human rights violations in South Africa and has reported regularly on the subject to the Commission on Human Rights, the Economic and Social Council and, since 1990, to the General Assembly.

2. The Commission on Human Rights, at its forty-ninth session, adopted resolution 1993/9 of 26 February 1993, in which it decided to renew the mandate of the Ad Hoc Working Group for a further period of two years. In resolution 1994/10 of 18 February 1994 the Commission requested the Working Group, inter alia, to continue to examine the situation regarding the violations of human rights in South Africa and to submit a preliminary report to the General Assembly at its forty-ninth session and a final report to the Commission at its fifty-first session.

3. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman-Rapporteur; Mr. Felix Ermacora (Austria), Vice-Chairman; Mr. Armando Entralgo (Cuba); Mr. Elly-Elikunda Mtango (United Republic of Tanzania); Mr. Zoran Pajic (Bosnia and Herzegovina); and Mr. Mulka Govinda Reddy (India).

4. Following informal contacts between the representatives of the Permanent Mission of South Africa and the Chairman on behalf of the Working Group to visit South Africa, an invitation was received from that Government on 11 February 1994 and was circulated to the participants at the fiftieth session of the Commission on Human Rights (E/CN.4/1994/118). The Commission on Human Rights, in resolution 1994/10, welcomed the invitation by the Government of South Africa to the Ad Hoc Working Group of Experts. The Working Group expresses its satisfaction at the long-awaited invitation.

5. In pursuance of the invitation, the Working Group conducted a mission to South Africa during the period 10 to 26 August 1994. In the course of the mission, visits were made to Pretoria, Johannesburg, Soweto, Durban, Pietermaritzburg, Kwamashu, Inanda, Phoenix and Cape Town.

6. The Group conducted hearings in Johannesburg from 10 to 16 August 1994, in Durban from 17 to 21 August 1994 and in Cape Town from 22 to 26 August 1994, for the purpose of receiving evidence and hearing testimony from individuals and organizations having first-hand experience with the situation in South Africa in respect of human rights.

7. The Working Group took note of the changes which have occurred in the country after elections based on universal suffrage which took place in April 1994.

8. The topics on which the Group received evidence and heard testimony were the following: right to life; detention, including conditions of detention;

deaths in detention and in police custody; capital punishment and executions; treatment of children and adolescents; right to education; right to health; right to work; situation of black workers; trade-union activities. The Working Group was particularly interested in issues connected with the security forces, treatment of suspects in police custody and those in prison, political prisoners, new approaches to educational institutions and health facilities, and the situation regarding the ownership of land and the rights of those who were forcibly removed from their land.

9. In addition to the 12 prisoners interviewed in private, the following witnesses were heard: Marcus Cox and Golden Miles Bhudu (South African Prisoners Organization for Human Rights, SAPOHR); Alan Ralphs and Coledane Markham (Catholic Institute of Education); Patrick Kelly (Human Rights Committee of South Africa); Frank Chikane and Eddie Makwe (South African Council of Churches); Gerrie Lubbe, Sheena Duncan and Yasmin Sooka (Panel of Religious Leaders for Electoral Justice); Lucrecia Seafield (Lawyers for Human Rights); Susan Wyxley, Brendan Pearce and Abie Ditlhake (National Land Committee); Graeme Simpson, Melanie Lue, Palesa Makhale-Mahlangu and Paul Van Zyl (Centre for the Study of Violence and Reconciliation); Faith Pansy Takula (Black Lawyers Association); Jude Pieterse (Southern African Catholic Bishops Conferences); Piers Ashley Pigou (Independent Board of Inquiry into Informal Repression); Ran Greenstein, Zanele Twala, Dr. Tikly and Shireen Motala (Education Policy Unit); V. Mosana (National Education Coordinating Committee); Ishmael Mkhabela (National Housing Forum); L. Tsenoli (South African National Congress Organization - National Civil Organization); Bhekani Russel Ngubo, Nhlamhla Ndumo, Maggs Naidoo and Jagwa (Police and Prison Officers Civil Rights Union (POPCRU)); Pius Nkonzo Langa (Commission of Inquiry into the Unrest in Prisons and member of the National Association of Democratic Lawyers); Louise Olivier (National Street Law Programme - Centre for Socio-Legal Studies, University of Natal, Durban); Pat Singh, Managay Reddi, S. Pather and R. Choudree (University of Durban-Westville); Eric O. Apelgren (Institute for Multi-Party Democracy); M. De Haas (Violence Monitor Natal); Mary Burton and Susan J. Joynt (Black Sash).

10. The Working Group was also invited to a workshop on "Constitutional litigation - breaking with the past", addressed by the Minister of Justice and organized by the Black Lawyers Association of South Africa in Johannesburg.

11. While in Johannesburg, visits to Zonderwater prison and Adriaan Vlok police station were organized by the South African authorities.

12. In Durban, representatives of the Institute for Multi-Party Democracy and Violence Monitor Natal testified before the Working Group. Members of the faculty of the University of Durban-Westville also made representation to the Working Group. The Working Group also received testimony from the representatives of POPCRU in Pietermaritzburg.

13. Visits to police stations organized by the South African authorities, including those to Durban North police station and Inanda (KwaZulu/Natal), were of particular interest to the Working Group and allowed the Working Group to have consultations with high-level officials, including those on duty at the provincial level.

14. In Cape Town, the Working Group had consultations with the Deputy Foreign Minister, the Minister for Justice, the Minister for Defence, the Minister of Safety and Security, the Minister of Correctional Services and the Deputy Minister of Education. In addition, consultations with high officials of the Ministry of Health were also organized to exchange views and receive information regarding government policies. The Working Group held meetings with several judges of the Supreme Court and followed part of the proceedings in a murder trial. A visit was also organized to the University of Cape Town where the Group had a meeting with the Dean of the Faculty of Law. Furthermore, the Working Group had discussions with a representative of Archbishop Desmond Tutu.

15. Visits to prisons organized by the South African authorities included Pollsmoor and Victor Vester.

16. The Working Group received information in the field of labour laws at Geneva from a representative of the Permanent Mission of South Africa, on behalf of the Government of South Africa, on 5 October 1994.

17. Apart from the official meetings, the Working Group heard a total of 42 witnesses.

18. On behalf of the Chairman, the Vice-Chairman introduced the preliminary report of the Working Group (A/49/543) at the forty-ninth session of the General Assembly.

19. The Working Group then met from 12 to 16 December 1994 at the United Nations Office at Geneva to consider and adopt the present report.

I. SITUATION OF HUMAN RIGHTS IN GENERAL

20. Since the non-racial multiparty democratic elections took place in April 1994, significant political changes have taken place in South Africa. The changes have created a situation which leads the people to look forward with great expectation to the future. However, it would appear that so far as the right to life is concerned, lack of respect for life, in the form of violent killings, continues and the crime rate has risen. On the other hand, according to information received, politically motivated killings seem to have decreased. However, deaths in police custody appear to continue. Recent reports by the Goldstone Commission appear to have gone some way in identifying the culprits connected with politically motivated killings and thus give a basis for investigations leading to eventual prosecutions.

21. According to information received from the Human Rights Committee, 270 persons were detained without trial between January and 15 May 1994, by which date all of them had either been charged or released. The Working Group notes that no one was detained without trial between 4 May and the end of October 1994.

22. The question of the abolition of the death penalty remains unresolved; however, it would appear that there is a majority view in favour of its abolition. According to the latest figures received, there are more than 500 persons on death row in South Africa.

23. The Working Group was informed that the Minister of Justice announced on 11 October 1994 that the moratorium on the death penalty would not be lifted. This statement preceded the announcement by the President of the Constitutional Court that a case involving capital punishment would be the first to be heard by the Constitutional Court. The hearing is scheduled for February 1995.

24. The Working Group notes that on 3 October 1994 the Government of South Africa signed the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

II. THE FIRST FREE ELECTIONS

25. The disenfranchised people of South Africa struggled for a long period to achieve the right to vote in order to participate in the governance of their country. Even after the legal machinery had been created for elections to go forward, differences were finally ironed out only a few days before the elections took place. The following is a brief overview of the events, as they unfolded since the beginning of 1994.

26. In January 1994, the Pan Africanist Congress of Azania announced its decision to suspend armed struggle and to participate in elections. In February 1994, further amendments to the Interim Constitution were adopted which included a two-ballot system permitting the possibility of voting for candidates at the provincial and the national level.

27. In the so-called "homeland" of Bophutatswana, in March 1994 a wave of unrest and strikes, arising out of restrictions on free political activity and fears on the part of civil servants that their pension rights and salaries would not be protected by the administration, led to violent clashes. Intervention by the Afrikanerweerstandsbeweging (AWB) with the intention of upholding the administration of Bophutatswana worsened the situation, leading to further violence and deaths. As a result of the continued strikes and protests and the African National Congress call to the Transitional Executive Council to intervene, the South African Cabinet ordered South African Defence Force (SADF) troops into Bophutatswana. The Transitional Executive Council decided to install an interim administration after the collapse of the "homeland" administration, and on 14 March 1994 two administrators were appointed.

28. In the so-called "homeland" of Ciskei, civil servants demonstrated and protested to register their dissatisfaction regarding the payment of their pensions. Unrest and violence resulting in deaths further deteriorated the situation and finally on 22 March 1994, the Ciskei military leader, Brigadier Oupo Ggozo resigned. SADF troops were immediately deployed in Ciskei followed by the appointment of two joint administrators.

29. In view of the fact that residents of Transkei and Venda had previously expressed their desire to participate in the elections and be reintegrated in the Republic of South Africa, the developments in Bophutatswana and Ciskei cleared the way to proceed with elections. At that juncture, the main obstacle was in respect of the non-participation of certain right-wing political parties, the Inkatha Freedom Party and the Conservative Party. After protracted negotiations and many concessions by the previous Government and Mr. Nelson Mandela to the IFP a week before the scheduled elections, they announced their intention to participate in the elections. After the necessary amendments to the Interim Constitution and the ballot papers, the stage was set for the elections to proceed. The foresight, generosity and statesmanship of Mr. Mandela was a crucial element in the realization of this long-awaited event.

30. During the last week of April 1994, the first ever non-racial multiparty elections based on universal suffrage took place in South Africa. Apart from isolated incidents of violence, the vast majority of the people of South Africa participated in the elections in the most orderly and patient manner. The elections were considered to be free and fair.

31. Twenty-three political parties contested the elections and four abstained (see annex I).

32. Voter education was a key component in the organization of the elections. The United Nations Observer Mission in South Africa (UNOMSA) was required to verify that the voter education efforts of the electoral authorities and other interested parties were sufficient and would result in voters being adequately informed about both the meaning of the vote and its procedural aspects.

33. Of the numerous parties contesting the elections only seven parties won seats in the 400 member National Assembly (see annex I).

Conduct of polling

34. On 26 April, the day reserved for special voting, observers visited and reported on a total of 2,960 special voting points. Also on 26 April United Nations observers monitored voting at 119 foreign voting stations in 57 countries.

35. On 27 and 28 April, observers in South Africa visited 7,340 of the 8,478 voting stations.

36. On the evening of 28 April polling was extended to 29 April in Transkei, Ciskei, Venda, Lebowa, Gazankulu and KwaZulu. A total of 180 observer teams were deployed to observe the extended polling in those areas.

37. After the end of voting, on 30 April, the Secretary-General's Special Representative in South Africa and the heads of the observer missions of the Commonwealth, the European Union and the Organization of African Unity issued a statement in which they stated:

> "With the end of voting in these historic national and provincial elections in South Africa, in which all South Africans could vote for the first time, we the heads of Mission of the United Nations, Organization of African Unity, Commonwealth, and European Union election observer groups have jointly agreed on an interim assessment of the process up until the end of voting and before counting is completed. Our assessment is based on the work of more than 2,500 election observers deployed throughout the country, under the coordination of the United Nations.
>
> "The people of South Africa clearly demonstrated their commitment to the end of apartheid and the transformation to non-racial democracy by turning out in enormous numbers to vote."

III. ADMINISTRATION OF JUSTICE

38. During discussions with the Minister of Justice, the Working Group was informed of policies and approaches that were to be adopted as far as legal institutions were concerned. The Minister stressed the fact that the present Government was the result of a settlement negotiated in the spirit of reconciliation and that there had been neither a revolutionary victory nor a revolutionary defeat. The Constitution of the country dealt extensively with all aspects of human rights; the mechanisms set up under the Constitution 1/ and the fact that all parties were committed to the Constitution precluded the creation of arbitrary standards. The Minister referred to the Bill of Rights, the judiciary, the Commission on Human Rights, 2/ the Commission on Gender Equality, the Public Protector, the Commission on Restitution of Land Rights as well as other procedures. He also stated that his Government would count on a strong civil society.

39. Referring to the question of amnesty, the Minister informed the Working Group that the previous Government had passed two laws, one in 1990 and another in 1992, to cover what were regarded as political offences committed before 8 October 1990. Many people were identified as being eligible under those procedures. In order to deal with those who had not yet been released, an advisory committee had been set up to deal with the cases of approximately 1,000 people, not all of whom were prisoners. The Constitution made provision for amnesty in cases arising out of past conflicts and would require further promulgation of legislation.

40. The Minister stated that amnesty would be granted, in accordance with the Constitution, to those who were eligible. However, as a result of country-wide discussion on the question, a Truth and Reconciliation Bill 3/ would be passed by the end of the year. The cut-off date for amnesty for political offences was 5 December 1993. The Minister further stated that when the Commission was set up, it would take an even-handed approach and it was envisaged that there would be full disclosure. At that juncture, it was not clear whether disclosures to the Truth and Reconciliation Commission would be made in camera, or whether they would be made public. The emphasis was to be

on the victims and their families and what form of reparation was to be given to them. The nature of the proceedings would not be judicial, thus leaving the question of prosecutions open, subject to amnesty. The Working Group considers that this process is of great importance in evolving the eventual mechanism and procedures to deal with victims. Preliminary discussions have taken place with the non-governmental organization sector and also at the international level, with Governments which have had to face similar problems and created similar mechanisms in the recent past.

41. Referring to the need to correct the non-representative nature of the judicial structures, the Minister of Justice stated that there was a need to "de-mystify" the law, and a need to move cautiously in dealing with those issues, as well as the question of training. He expressed, inter alia, concern over the current juvenile justice system and the fact that there were too many prisoners awaiting trial.

42. The Working Group also received testimony from various non-governmental organizations in this connection. The representative of the Black Lawyers Association informed the Working Group that her organization had been formed more than 10 years ago partly because the statutory bodies which governed the profession were not representative and resulted in the marginalization of black lawyers. At the time of her testimony, only 13 per cent of lawyers were black, there were only three black judges and very few female lawyers who practised law in South Africa. Prior to the April elections, her organization, through its six law clinics situated in the rural areas of the country, including one in a township, had dealt with political cases, especially those of people incarcerated under the apartheid system, in addition to offering free legal representation to those who could not afford legal services. Assistance was offered in cases related to housing, labour and consumer protection. The future focus of the association was likely to include constitutional litigation, health and environment protection, juvenile justice, discrimination against women in general and in particular against women in rural areas under African customary law.

43. The representative referred to the question of restitution of land to those deprived under forced removals and stated that she envisaged a considerable amount of litigation arising out of this issue which would be centred mainly around the problem of proving ownership. In many instances, land had previously been owned by communities because, under the customary law then prevailing, individual ownership of land was not recognized: usually the chief or head of a community owned the land on behalf of the community. Under customary law, this person was usually a man. In some cases land had been bestowed in recognition of services rendered during the Second World War. The witness stated that the whole question of recognition of continued ownership under customary law would have to be clarified as it might not be tenable in the current political, social and economic situation.

44. The President of the National Association of Democratic Lawyers (NADEL) stated that the new Government had inherited mechanisms, albeit discredited, governed by the policy of apartheid of the previous administration. He referred to the widespread non-participation of lawyers in the institutions dealing with the administration of justice, who refused to accept appointments as magistrates and judges in order to avoid administering and implementing

laws which they considered to be oppressive. He stated that there was a need to change the representation at all levels, and especially as far as the bench was concerned: the first non-white judge had been appointed only a few years ago. He also stressed the need to increase the number of black lawyers in private practice and encourage their participation in the judiciary. In that connection, he expressed the hope that more appointments as silks (Senior Counsel) would be made from among the ranks of experienced black legal practitioners, in addition to the two made recently. He also stressed the great need for the appointment of black lawyers to bodies like the Bar Council and the Law Society. Had it not been for the strong intervention of organizations like the Black Lawyers Association and NADEL, the previous racial imbalance would have been perpetuated in, for example, appointments to the Judicial Service Commission.

45. The Working Group notes that the establishment of a Judicial Service Commission goes a long way towards creating and maintaining an independent judiciary. Accelerated training and affirmative action in this particular realm are of crucial importance.

IV. SECURITY

46. The representatives of the Police and Prison Officers Civil Rights Union (POPCRU) informed the Working Group that their organization had been established in 1989 in Cape Town by Lieutenant Gregory Rockman immediately after a serious incident when a white commander from another locality overruled him and gave orders to shoot at a crowd of peaceful demonstrators. The principal aims of the organization were the right of police officers to form and join unions, the rights of non-white officers to participate in decision-making in respect of community relations and the use of force in crowd-control. When the organization was first formed, it was its policy to adopt militant strategies. However, this had been abandoned in favour of a strategy of negotiation and arbitration.

47. The organization supported the right to life of detained persons and the right of arrested persons to be set free on bail, where applicable. The organization was non-racial and worked in the interest of the community as a whole. It was one of its aims to change the old perception of the communities that the security forces were their enemies; they wished to establish the principle that the security forces had a duty to assist the community at large. The organization was committed to respect for fundamental human rights and was totally opposed to police brutality. In that regard, they were working very closely with the Minister of Safety and Security.

48. The representative of the Independent Board of Inquiry focused mainly on the situation of those accused of criminal offences who were in police custody awaiting trial and who were subjected to torture in a consistent and systematic way. Information was submitted in support of the allegations of torture especially of prisoners awaiting trial in the area referred to as the Vaal Triangle. The witness referred to a report by the second Dutch Violence Observation Mission to the Vaal Triangle in South Africa ("Shocking Morals" - The Vaal Revisited, February-May 1994) (annex II) and stated that three days before the members of the Commission of Inquiry were due to conclude their work, they discovered a torture machine at a police station in Vanderbijlpark

used for administering electric shocks in order to extract confessions. This discovery was a result of information received from a prisoner who had been arrested on 2 May 1994 and was interviewed the day after he was tortured. The witness stated that subsequent to this discovery, his organization was given a list of names of those who were held in Vereeniging prison and who alleged that they had been subjected to serious assaults and torture by the South African Police. Out of 43 prisoners awaiting trial, 21 alleged that electric shocks had been administered to them, in addition to having been physically assaulted during the course of interrogations carried out over a period of three days in the middle of May 1994, at the remand section of the aforementioned police station. As a result of these discoveries and further inquiries during May, June and July 1994, the Provincial Minister of Safety and Security, Ms. Jessie Duarte, proposed that a Commission of Inquiry into torture in the Vaal Triangle be created. For the first time, civilians from organizations like Lawyers for Human Rights, the Independent Board of Inquiry and the Peace Secretariat from the Witwatersrand/Vaal area would be appointed as members of the Commission. According to testimony received, policemen from countries like the Netherlands, Denmark and the United Kingdom were expected to be part of the investigating team, in addition to members of the South African Police Force. The witness further stated that 300 cases of torture were alleged to have taken place over the previous 18 months, a considerable number of them during 1994. The most recent allegations of torture by electric shock and physical assault had occurred on 4 and 11 August 1994, respectively.

49. The witness stated that although the levels of abuse had subsided as a result of increasing publicity, abuses still continued and that almost every police station and police unit in the Vaal had allegedly been implicated. Furthermore, almost all the allegations which were under investigation involved ordinary criminal suspects. The witness gave detailed accounts of prisoners and the alleged tortures they were subjected to and stated that the prisoners were afraid to lodge a complaint for fear of further retribution as they continued to remain in the custody of the officers who actually carried out the assaults and tortures. In support of this, the representative of the Independent Board of Inquiry referred to the case of Samuel Mokanadi, a prisoner currently in Vereeniging prison, who complained to the magistrate at Meyerton that he had been tortured. After the complaint he was tortured again, as a result of which he confessed to a murder he could not have committed, as he had been in prison at the relevant time.

50. The witness stated that, according to his information, torture was practised all over South Africa, although the problem appeared to be particularly acute in the Vaal Triangle and the Pretoria, Witwatersrand and Vereeniging areas. The Brixton Murder and Robbery Unit appeared to be implicated on a regular basis. A majority of the victims appeared to be black residents of townships: out of the approximately 100 cases he was investigating, 3 were white, 2 Indian and 4 coloured. The witness was of the opinion that the ministries of the newly constituted Government of National Unity were severely hampered in their work by a lack of resources and also by the fact that the powers of ministers at the provincial level had not yet been clearly defined.

51. In view of the historical background of South Africa, as far as the conduct of the South African Police and South African Defence Force was concerned, the Working Group was of the opinion that their meeting with the Minister of Safety and Security was of great importance. Referring to an apparent rise in the crime rate, the Minister stated that discussions had already taken place between the responsible provincial ministers and commissioners of police. It appeared that there were four provinces where violent crimes (including the killings of police personnel) mainly took place: (PWV) Pretoria, Witwatersrand and Vaal, KwaZulu/Natal, Western Cape and Eastern Cape. It was further discovered that 80 per cent of police stations were located outside the problem areas and that those police stations located in the flash-point areas were ill-equipped. The police officers who investigated serious crimes were dependent on public transport. A programme had been drawn up aimed at dealing with the lack of resources and other problems facing the ordinary police personnel. In some cases, as a result of an improvement in the community-police relationship, persons accused of violent crimes had been apprehended. In conjunction with other relevant ministries, a crime prevention programme was in the process of being developed and it was envisaged that it would also deal with illegal immigrants and organized crime syndicates. The Minister of Safety and Security then referred to the proposed South African Police Services Bill which was being discussed and which, it was hoped, would become law in the very near future. He stated that the bill was drafted after a technical committee was appointed and elaborate consultations had taken place. The participation of the community, non-governmental organizations and human rights organizations and others concerned was instrumental in the evolution of the bill. The Minister stressed the necessity of promoting good relations between the police and the community and to ensure the participation of members of the community in efforts aimed at upholding their safety and security.

V. SITUATION OF PRISONERS

52. The Working Group heard testimonies from the representatives of the South African Prisoners Organization for Human Rights (SAPOHR), who informed the Group that their organization was non-racial and non-partisan and was concerned with the creation of a human rights culture in South Africa in order to prevent serious human rights abuses against prisoners, which continued to occur in the South African prisons. Their work was also centred around the reform of the apartheid criminal justice system with particular emphasis on the correctional services system, in order to overcome racism, corruption and a lack of transparency.

53. The Group was informed that about 97 per cent of the prison population was black and that about 75 per cent of them (some 83,000) were tried in a language they did not understand and without proper legal representation. Before the recent releases resulting from the remissions granted by President Mandela, the prison population was estimated to be even higher, in the region of 115,000. There were large numbers of juveniles in prison, many of whom were believed to be incarcerated together with adults. Prisoners' rights regarding access to medical services and family visits were often disregarded and prisoners were frequently abused, handcuffed for long periods, isolated, straight-jacketed and intimidated. It was alleged that abuses of these kinds were widespread.

54. It was alleged that the system which existed before the change of government continued, including the lack of transparency and accountability. In addition, it was alleged that gangsterism was orchestrated by prison wardens. The Working Group was informed by the witnesses that given the unnatural environment of seclusion and overzealous implementation of punishment, added to the long-standing lack of respect for human rights, the situation has been exacerbated to the point of extreme volatility.

55. Referring to the Commission of Inquiry set up under the chairmanship of Justice Johann Kriegler, the witnesses told the Working Group that the terms of reference of the Commission were too restrictive as it could examine only the period between two specific events when violent incidents took place. The witnesses referred to the deaths of 21 inmates of Queenstown prison on 21 March 1994, as well as the brutal assaults on 44 inmates on 18 March 1994, when two prison warders were taken hostage. On the latter occasion, the assaults took place while senior members of the Government and representatives of the Transition Executive Council, as well as of SAPOHR, were in fact present in order to mediate in the release of the hostages. It was reported that the assaults were carried out by more than 100 warders and lasted for more than 45 minutes. About two weeks after the incident, a large number of inmates were again assaulted, resulting in permanent damage to many of them and eight deaths. Those incidents took place before the democratically elected Government came to power, and would not be subject to investigation by the Commission. All the warders connected with the assaults remained in their jobs. The witnesses stressed the need for a comprehensive inquiry which would not only examine the situation of prisoners in terms of their human rights but also the whole question of rehabilitation necessitating vocational and other training programmes for prisoners while in prison in order to facilitate their reinsertion in society when released. In that connection, the situation of prisoners must be viewed in the context of offences committed in defiance of the apartheid regime and arrests made by the repressive security forces. In view of the fact that their trials were conducted in a language that the accused persons did not understand and in most cases without legal representation, there was a real possibility that in many cases the accused might have been convicted of offences they never committed. Indeed, many prisoners had never ceased to claim that they were innocent. According to the witnesses, less than 30 per cent of those in prison had been convicted of violent crimes. It was stressed that the whole issue of administration of justice needed careful assessment.

56. The Working Group was further informed that according to normal procedure, prisoners were given a sum of 20 rand (US$ 6) when released. Given the high unemployment rate, lack of access to land for various reasons including forced removals, as well as the reluctance of employers to offer jobs to those with a prison record, possibilities of gainful employment were few. The witnesses stressed the great need for counselling and therapy while in prison and training and rehabilitation programmes after release. There was also an immediate need to revise the laws and the tendency to send people to prison too quickly. The example was given of the case of a mother of three young children who was sentenced to five years' imprisonment for defrauding a motor insurance company of 50 rand.

57. The Working Group received testimony from advocate Pius Nkonzo Langa, in his capacity as a member of the Commission of Inquiry which was appointed on 1 July 1994 by President Mandela to investigate and report on the violence which led to injuries and death, arising out of two incidents which took place on 26 April 1994 and 13 June 1994. The Commission, under the chairmanship of Judge Kriegler, had two other members. He concurred that the terms of reference of the Commission were rather narrow, as they restricted the Commission to investigating and reporting only on the causes of unrest which had led to the aforementioned incidents and to make recommendations on steps to be taken to preclude the repetition of such incidents. Advocate Langa explained the procedures adopted in order to encourage prisoners to report their concerns to the Commission freely and to assure them that they would not suffer reprisals. There was severe overcrowding in the prisons and the urgency of other problems in prisons had been taken into consideration. There was a great need to clarify the situation regarding the expectations of prisoners for release either under an amnesty for political prisoners or because they consider that sentences imposed on them under apartheid should be cancelled as the previous Government could not be regarded as legitimate.

58. Advocate Langa referred to the new procedure under which the Commissioner of Prisons had some discretion under which it was possible to be placed under correctional supervision, which further raised the hopes of prisoners for an early release. He also referred to the dissatisfaction of the prisoners when black warders with long experience continued to serve under white personnel, some of whom had minimal experience. This was perceived by them as racial discrimination. In view of the foregoing, the interim report submitted by the Commission to President Mandela contained a recommendation that a mechanism analogous to an ombudsman system should be established quickly to address the immediate needs of the prisoners and in order to avoid the building up of frustrations amongst prisoners which could eventually lead to further violent outbursts.

59. The Working Group was given the opportunity to visit three prisons as well as three detention cells in police stations in different parts of the country. In two of the prisons, the Group was able to interview, in private, prisoners of their choice. It was observed that conditions in prisons varied considerably. During the visits, it became clear that there was a need to ameliorate prison conditions and detention cells at police stations. Conditions at Vonderwater prison were found by the Working Group to be satisfactory. However, after a visit to Pollsmoor prison and Victor Vester prison, the Working Group would like to recommend better access to medical care, provision for a better diet and facilities for physical activities. The Working Group noted that the prison authorities were faced with, inter alia, difficulties arising out of severe overcrowding and budgetary problems.

60. In the course of the discussions with prison authorities as well as the inmates, it became clear that there was inadequate understanding of the rights and/or privileges of the prisoners vis-à-vis the officials who were in positions of authority, especially in respect of medical care.

61. The Minister of Correctional Services as well as the prison officials had stressed some of the difficulties in maintaining discipline in the present circumstances, faced as they were with overcrowding and understaffing.

62. The Minister also referred to the two incidents which gave rise to violent confrontations and which had led to the appointment of the Commission of Inquiry. The Working Group considered that given the difficulties which arose over the right of prisoners to vote and the lack of a proper understanding of the eligibility for amnesty of prisoners qualifying as political prisoners, there is a great need for an in-depth and wide-ranging inquiry which would take into account not only the above-mentioned problems but also the whole question of opportunities and access to education and betterment of prisoners as well as the possibilities for rehabilitation and reinsertion into society after completion of prison sentences.

63. The Working Group noted that on 1 June 1994 President Mandela had granted a six-month remission of sentence to all prisoners. As a result 12,000 prisoners were set free. Furthermore, since the democratically elected Government came to power, all mothers with children under 12 who had committed non-violent crimes had been released. Minors who had committed non-violent crimes and had a place to go to, i.e. either to their parents or guardians or places of safety, were also released. The destructive effect on the family among the non-white population of South Africa under the apartheid system is of particular significance for children who are imprisoned, when looked at in the context of the foregoing.

64. The Working Group noted that there was a widespread mistrust of officers who had served under the oppressive apartheid system. The Group believed that it might be useful to introduce new blood among prison officials at all levels; this would contribute to overcoming distrust and creating a better atmosphere. In that regard, the Working Group considered that great care and attention should be given to training and recruitment in the future.

65. It may be mentioned here that the Working Group was informed by human rights organizations that according to representations made to them by prisoners, their situation was desperate. Although officially no apartheid existed, when medical care was required, white prisoners were allegedly sent to hospitals which were formerly white and black prisoners to hospitals which were formerly black. Furthermore, although there was an amendment to the statutes dealing with prisoners which abolished punitive disciplinary actions, allegations of decrease in the portions of food allocated, solitary confinement, physical assaults on prisoners and delay in access to medical treatment were made against the officers of correctional services. It was further pointed out that lack of proper heating over a period of time could result in diseases like rheumatism and a generally substandard diet could result in deterioration of health. The Working Group was also informed that due to the fact that the senior personnel are essentially the same as before, the implementing of new approaches in administering the daily life of prisoners would be difficult. It was alleged that the attitude of the prison officers had not changed. A plea was repeatedly made for a change in the personnel to make them more representative.

Forced removals and restitution of land rights

66. According to information received from the Association for Rural Advancement, there were between 190,000 and 250,000 labour tenants in the rural areas of KwaZulu/Natal. The history of labour tenancy, the Working

Group was once again informed, was one of control and dispossession. In 1864, the Natal Native Trust was formed to supervise and administer land set aside for Africans in Natal. In 1891, the Natal Native Code was established, setting out rules for almost all aspects of life, including access to land and tenure. The Land Act, 1913; the Native Land and Trust Act, 1936; the Native Law Amendment Act, 1952; and an enactment to amend the 1936 Act were all designed to create a rural labour supply by turning African squatters into labour tenants. There was considerable resistance to the labour tenancy system in the rural areas. By 1959, the labour tenancy system was neither providing land to the African tenants nor enough labour for white farmers. Consequently, the Nel committee was established to investigate the efficiency of labour tenancy and the implications of abolishing it. The committee recommended complete abolition of labour tenancy by 1966. The Bantu Laws Amendment Act of 1964 was enacted which provided that labour tenancy could be abolished by a simple proclamation, and labour farms were outlawed. However, it took 21 years before a technical and legislative ban was imposed. In the wake of the expansion of commercial agriculture, labour tenancy adjusted to the situation. While the traditional exchange of labour for certain land rights still exists as a form of social relationship, it has become difficult to distinguish between farm workers, labour tenants and "rural dwellers". According to information received by the Working Group, "rural dwellers" have limited income, education and skills and have precarious tenure as they have no title to the land on which they carry out agricultural activities. It would appear that their main preoccupation is with access to arable or grazing land which offers them security of tenure rather than acquisition of title to the land in question.

67. In order to redress imbalances in land ownership and compensate the victims of forced removals, legislation was enacted in early November 1994 which made provision for the restitution of rights in land in respect of which persons or communities had been dispossessed under laws based on racial discrimination. It was deemed necessary to promulgate the new legislation mainly because claims for restoration of land under the provisions of section 91 of the Abolition of Racially Based Land Measures Act, 1991 made no provision for the payment of compensation and the procedure did not offer a judicial alternative. Under the new legislation, provision has been made for the establishment of a Land Claims Court so that land claims can be decided without the delays associated with normal court procedures.

68. The Land Claims Court is empowered to decide on the question of restitution and compensation in respect of any rights in land as well as to decide the question of ownership. The Court has been given considerable flexibility as far as the question of admissibility of evidence is concerned and can accept all information which is considered relevant and cogent to the questions relating to the matter under consideration.

69. Furthermore, as a preliminary measure, provision for a Commission on Restitution of Land Rights has been made. The Commission will consist of a Chief Land Claims Commissioner, a Deputy Land Claims Commissioner and as many regional land claims commissioners as may be appointed by the Minister of Land Affairs.

70. Claims for restitution of land rights as of 19 June 1913 will be entertained and all claims must be lodged within three years after the date fixed by the Minister of Land Affairs by notice in the official government Gazette.

71. The Land Claims Commission, through its officers, is required to take reasonable steps to ensure that claimants are assisted in the preparation and submission of claims, advise them of the progress of their claims at regular intervals, define any issues which become the subject of dispute and subject to the procedure laid down for mediation, and report to the Land Claims Court on the terms of settlement in respect of successfully mediated claims. The Commission has been given the power to monitor and make recommendations regarding the most appropriate form of alternative relief for those who do not qualify for restitution of rights in land under this legislation. Furthermore, priority is to be given to claims which affect substantial numbers of persons, or persons who have suffered substantial losses as a result of dispossession or persons with particularly pressing needs.

72. If it becomes evident to the Commission, inter alia, that the land in question is not State-owned land or there are several claims to a particular right in land or the holder of rights in such land is opposed to the claims, the Chief Land Claims Commissioner may direct the parties concerned to settle the dispute through a process of mediation and negotiation.

VI. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Economic and social rights

73. The Working Group noted with interest the brief outline given by the Deputy Minister of Foreign Affairs who stated that human rights and democracy and the improvement of the socio-economic conditions were the two cornerstones of the policy of his Government and that the proposed Reconstruction and Development Programme would go a long way in the attempts to correct the socio-economic legacies of the past. He informed the Working Group that South Africa had joined the Organization of African Unity, the Commonwealth and the Non-aligned Movement and resumed its participation in the activities of the United Nations. Proposals to join the Southern African Development Coordination Conference (SADCC) was under consideration. 4/ He also referred to the possible creation of a southern Africa human rights commission. The Minister stated that his country was greatly indebted to the international community, without whose involvement in South Africa the process towards democratization would probably have been much more costly and painful. His Government was also particularly conscious of the important role the various international organizations and the continent of Africa played in that respect. He further stated that it was clear that his country would continue to be subject to the same scrutiny as all other countries concerning human rights violations.

74. Senior officials of the Ministry of Health discussed the whole question of health care in the country with the Working Group. It was pointed out that there were two distinct systems in South Africa: firstly, the private system, where medical schemes were based on insurance contributions by employers and their employees, to which the higher income groups in the formal sector

belonged, and secondly, the public sector system. Twenty-three per cent of the population of South Africa belonged to one of the insurance schemes in the private sector. The remaining 77 per cent of the population had no insurance and was considered the responsibility of the public sector. The great disparity in funding the two sectors could be seen from the fact that the 23 per cent of the population in the private health sector consumed 46 per cent of the total health care expenditure while the 77 per cent in the public sector consumed 54 per cent. Patients paid according to the income they earned, on a sliding scale, and those who were unemployed got free treatment in the hospitals.

75. The Working Group was informed that President Mandela announced that as of 1 June 1994, children under six years of age and pregnant women would be entitled to free medical care. In addition, it was announced that under a feeding scheme for primary schools, children would receive free meals. Under this scheme, 130,000 schoolchildren are currently receiving free meals on a daily basis. It was envisaged that from 1 September 1994, the numbers would be increased to 1.9 million and eventually include 3.8 million children, who would receive meals five days a week during the school term, at a total cost of over 1 billion rand. The total primary schcol population in South Africa is estimated to be 8 million. Therefore, the scheme is to be extended only to areas where the greatest need exists.

76. The Working Group was informed of the need to provide access to hospitals, especially for the underprivileged. However, it was envisaged that in the course of the next four years 870 clinics would be built first, as in the present situation primary health care was needed more urgently. The clinics were to be built in the rural areas and in the informal settlement areas. The Working Group was further informed that in the Reconstruction and Development Programme, a great deal of attention had been given to the health care sector. Primary health care, maternal and child health care, family planning and immunization programmes had received special attention. The Working Group was also informed that the focus, to begin with, would be on primary health care, and that initially prevention and health promotion would take precedence over curative health care.

77. The Working Group was informed that since the elections, apartheid was no longer practised in hospitals. However, the geographical location of hospitals might result in a situation where hospitals in an affluent area would be used, for example, by white patients only, as they would be too far away for the non-white population. Referring to the medical staff, it was further stated that selection procedures had been changed to ensure training of more non-white doctors, especially from the rural areas. The recent intake of non-white medical students at the University of Cape Town was 66 per cent. The medium of instruction being Afrikaans in three of the medical schools in South Africa, bridging courses were offered to those students who required assistance. All universities now admitted students without taking their race into consideration.

78. The Working Group was informed of the possible introduction of compulsory community service for all who qualified as doctors to serve in rural and squatter areas for a period of two years. It was pointed out that 50 per cent of students who had qualified from the University of Witwatersrand had left the country after three years.

B. Trade union rights and the situation of workers

79. A representative of the Permanent Mission of South Africa to the United Nations Office at Geneva gave information to the Working Group in respect of the situation of labour reforms which affected deprived workers in certain sectors. Referring to the progress made towards democracy and the guarantee of human rights in South Africa in the field of labour relations, he stated that in the past progress had been achieved more quickly in that area due to the strength of the employers and workers' organizations which was in advance of the situation regarding political rights. However, a great deal of ground had yet to be covered before the consequences of apartheid could be thoroughly eradicated in respect of industrial relations, labour and employment. The initial task was the creation of a single Department of Labour in place of the previous 10 "homelands" departments and a white central Pretoria-based department, which did not function according to the normal labour-market criteria but according to racially imposed criteria. Under apartheid (which was still in place at the time when the information was given), it was the objective of the system to engineer the racial composition of the workplace as well as the occupational structures. There was no section in those departments which dealt with labour market analysis and no policy on labour markets because the policies of apartheid were practised regardless of labour market indicators. In order to normalize the situation and institute a democratic industrial relations system, a new institutional structure of a higher quality was needed. In the past, disputes had been resolved through adversarial labour relations systems which led to a very high rate of strikes in South Africa; conciliation and mediation functions were non-existent. That situation created difficulties in avoiding conflict in the resolution of industrial actions. He said that agreement had been reached to create a new department as from the beginning of November 1994, as a substitute for the previous 11 departments.

80. Referring to the Labour Relations Act, he stated that although it had been amended substantially in the past few years, many aspects remained unacceptable, since the legislation did not adequately cover educators, farm workers, domestic workers and workers in the public service. Amendments in those respects were often in the form of a compromise at the necessary juncture. Referring to the amendments which affected farm workers, he stated that farmers had refused to accept the principle of collective bargaining for farm workers or to allow trade unions to have physical access to their premises. Thus, the basic right of freedom of association was not yet guaranteed for farm workers. Minimum wages are not guaranteed for farm workers or domestic workers. Under the Wage Act, there was a provision for a Wage Board to deal with most sectors of the economy; however, the public service and the agricultural sector were excluded. Those were some of the problems that needed to be remedied. The first initiative in that direction was launched in early September 1994 with the appointment of a tripartite (i.e. representing employers, workers and the Government) ministerial drafting

committee comprising seven labour lawyers with a mandate to draft new legislation to cover all sectors of the economy and which would guarantee the basic rights of freedom of association, the right to strike and the right to bargain collectively in all sectors. This legislation had been prepared and was due to be submitted to a tripartite national labour commission at the end of October 1994, which would publish it for comment. It was envisaged that the draft bill would become law in early 1995, after a public debate had taken place prior to the bill being tabled in Parliament.

81. The representative recalled that the Minister of Labour at the International Labour Conference in June 1994 had made a commitment in the short term that South Africa would ratify ILO Convention Nos. 87 and 98 on freedom of association and collective bargaining, as well as the Conventions No. 144 on the tripartite structure and No. 138 on the minimum age of workers.

82. He further stated that the situation of mine workers had been very unsatisfactory and that approximately 600 mine workers died and 2,000 workers were permanently injured every year. In spite of concern expressed in the past regarding such a high rate of accidents, it was only late last year that a Commission of Inquiry was appointed under the chairmanship of Justice Leon. The report was expected to be published early in 1995 and draft legislation was expected to be tabled in Parliament within the first half of next year.

83. Under the new draft legislation, it was envisaged that a mediation and arbitration commission would be constituted with a view to rapid intervention which would allow for flexibility in the mediation process without recourse to costly and formal legal procedures. The new proposal was designed to avoid strikes as the only action available when disputes arose between employers and employees. Furthermore, he stated, the draft legislation also envisaged a system of consultative committees. Where trade unions had been unable to secure at least 50 per cent of the workers in an establishment and to sign a recognition agreement or a collective agreement with the employer, the workers would exercise their right to have a consultative committee and the employer would be obliged by law to have consultations with those committees in respect of decisions on matters like investment, recruitment policy, closure or moving the enterprise from one place to another. However, there was as yet no clear definition of what the rights of workers would be during such consultations.

84. The situation of farm workers remained a major concern. He stated that there were an estimated 60,000 commercial farms in South Africa, many of which were large and isolated. They employed a seasonal workforce which was often migratory. On the other hand, the permanent workforce on those farms was housed, fed and educated by the farmer. In those circumstances, in a situation where farm workers resorted to collective bargaining, the farmer had enormous leverage and he could easily resort to eviction, manipulation of rations and bargaining over the education available to the farm workers' children. When the farm workers retired, traditionally they remained on the farm. That could also be affected if the farm workers participated in any collective industrial action. The plight of the farm workers was further exacerbated because most of them were illiterate. Moreover, unlike the situation in every other workplace in South Africa, the farmer was not required to publish in a clearly visible place all rights relating to the work, resulting in a total lack of awareness of their rights as far as farm

workers were concerned. In that connection, he referred to an anti-labour practice clause which was included in the proposed new labour law which could assist farm workers. However, the main problem would be that of educating the farm workers about their rights, which could be solved only if there was better access to the farm workers through a network of farm workers' trade unions.

85. Referring to the recent increase in strikes, he stated that the possible reasons could be the rise in inflation, the loss of experienced trade union leaders who had been appointed and absorbed into various government and private sector posts, and continued racial discrimination in the workplace. As an example of the last, he referred to the practice whereby white mine workers were brought up to the surface before the black workers, resulting in their having to wait for up to two hours. When the black workers refused to accept this practice any longer, they were assaulted by white mine workers. This led to a number of cases of industrial action at the mines.

86. It was envisaged that the four statutes in force (i.e. Labour Relations Act, 1956; the Agricultural Labour Act, 1993; the Education Labour Relations Act, 1993; the Public Sector Labour Relations Act, 1993) would be replaced by a Labour Relations Act, which would reform the previous legislation to include the rights of domestic workers and farm workers.

87. The Working Group noted that a change in migrant labour policy was envisaged and that land reforms based on a free market policy were also under discussion. Furthermore, the proposed appointment of a mediation and arbitration commission would assist considerably, inter alia in the elimination of industrial action in the form of a strike as the only action available when a labour dispute arose.

C. Cultural rights

88. In his discussions with the Working Group, the Deputy Minister of Education referred to the past inequalities under the apartheid system and stated that under the Constitution every citizen had a right to education. The State therefore had the responsibility to provide education for all citizens, without any discrimination based on race, religion or gender. In the past only white children had the privilege of compulsory school attendance, and other communities were excluded. The reorganization of the former educational system into a unified system was scheduled to commence with two pieces of legislation. The Education and Employment Acts were due to be tabled before the end of the current session of Parliament. The Working Group was informed that a white paper would soon be available, and by the end of the year it would be tabled in Parliament; it was envisaged that the white paper would set out policy formulated after considering priorities and would create the legal framework and develop a structure for the areas in greatest need. Particular attention was being given to eradication of institutional structures and schemes which fostered the preservation of apartheid in education. It was envisaged that a policy for restoration of a culture of teaching and learning would be commemorated and Soweto Day was set aside for that purpose.

89. Under the requirements of the Constitution only the national Government could establish universities and Technicons, which were State-subsidized. However, the provincial administration was entitled to lay down general policy as regards curricula and remuneration of teachers. Minimum age for school attendance had not yet been established. The Working Group was informed that 23 per cent of the national budget was being spent on education and that in time, it was hoped to build a reservoir of teachers, equal access to educational facilities and community commitment for compulsory education. A review of the university system was planned in order to achieve orderly access through equitable planning.

90. The Working Group was informed that planning for equality of access in education to meet the constitutional obligation by 1995 needed dramatic changes.

91. It was the view of organizations such as the Education Policy Unit and the National Education Coordinating Committee that the necessary changes in the system of education created under the apartheid system would take a long time to put into practice. State subsidies given to certain schools through the salaries of teachers and other assistance would have to be decreased, especially in the townships and rural areas, so that the differences in the quality of the education available to children in South Africa could be narrowed down. The general view expressed regarding the budget available was that even under the Reconstruction and Development Programme, the financial resources available fell far short of the actual need and expectations. In that connection, there appeared to be great expectations in terms of aid and assistance from the international community and aid agencies. There was a consensus amongst those working in that field that there was an urgent need to revise the curricula as well as the textbooks used, so as to reflect history in a factual and unbiased manner, so far as South Africa was concerned. The Working Group noted that many organizations continued to work closely with the policy makers in the Ministry of Education.

VII. HUMAN RIGHTS PROVISIONS IN THE INTERIM CONSTITUTION

92. The Working Group has taken note of the following:

(a) As pointed out on several occasions by the ministers of the Government of National Unity of South Africa, the Constitution of South Africa is a result of a negotiated settlement and therefore represents, in a large measure, the acceptance of compromises by all parties concerned;

(b) The Constitution of the Republic of South Africa, which is currently in force, is an Interim Constitution. Under its provisions (S. 73 (1)), the Constitutional Assembly is enjoined to adopt amendments, if any, within two years from the date of the first sitting of the National Assembly. Provision is made for procedures to be adopted in the absence of the requisite two-thirds majority needed for its adoption;

(c) The Constitution expressly abrogates former laws on which the system of apartheid was based, and wide-ranging provisions for the protection of human rights and implementing procedures to guarantee them have been made;

(d) Fundamental rights, as enumerated under chapter 3 of the Constitution, are binding at all levels of Government, i.e. including the provincial level;

(e) The Working Group notes with satisfaction that the right to life is guaranteed. However, questions such as the death penalty, abortion, and matters mentioned in the International Covenant on Civil and Political Rights regarding pardons and executions are not dealt with;

(f) The right to equal protection and equality before the law is far-reaching and is in line with the provisions under the International Convention on the Elimination of All Forms of Racial Discrimination;

(g) Furthermore, provision is made for freedom and security of the person, which includes the right not to be detained without trial. Torture of any kind, as well as cruel, inhuman or degrading treatment or punishment, is forbidden (S. 11);

(h) The Constitution forbids servitude and forced labour and privacy is guaranteed. It includes the right not to be subjected to an arbitrary search of a person, or his or her home or property. It also protects against the violation of private communications and the seizure of private communications. However, no mention is made of data protection;

(i) The right to religious belief, freedom of opinion, assembly and movement as well as the right of association are guaranteed under the Constitution. The right to choose a place of residence is expressly provided for (SS. 14-19);

(j) The right to participate in political activities is guaranteed and the right to vote by secret ballot is provided for (SS. 20 and 21);

(k) Provisions regarding access to court in respect of justiciable disputes and access to information held by the State or any of its organs are contained in the Constitution (SS. 22 and 23);

(l) The general principles regarding administration of justice and detention and arrests of person, which correspond to the relevant international instruments, are clearly indicated (SS. 24 and 25);

(m) Some economic and social rights, including the right to an environment which is not detrimental to health, are also included in chapter 3 of the Constitution (SS. 26-32);

(n) In addition to the general provisions regarding limitations which are in conformity with international judicial practice, the question of detention under a state of emergency is dealt with extensively (SS. 33 and 34).

93. The Working Group notes with satisfaction that specific provisions are made to uphold the human rights of the citizens of South Africa and that aggrieved parties have recourse to the following:

(a) The Constitutional Court (SS. 97, 98 and 99). The Constitution provides that the President of the Constitutional Court shall be appointed by the President to hold office for a non-renewable period of seven years. In addition, the Court will consist of 10 other judges. Their appointment is regulated by detailed procedures as set out (S. 99). Their term of appointment consists of a non-renewable period of 10 years;

(b) The Public Protector (S. 110). A Public Protector for the Republic of South Africa shall be appointed by the President within 60 days of the first sitting of the Senate after the commencement of the Constitution;

(c) The Human Rights Commission (S. 115). The President shall appoint a Human Rights Commission which shall consist of 10 members and a Chairperson within 60 days of the first sitting of the Senate under the Constitution;

(d) The Supreme Court (S. 101);

(e) The Commission on Gender Equality (S. 119). The Commission on Gender Equality shall consist of a Chairperson and such members as may be determined by an Act of Parliament, in order to promote gender equality and to advise and make recommendations to Parliament or any other legislation with regard to legislation which affects gender equality and the status of women. The aforementioned mechanisms are not yet in place, although nominations to some of them have already commenced.

94. The Working Group notes that the Constitution contains far-reaching provisions, which take cognizance of international instruments, to safeguard human rights.

95. The Memorandum on the Objects of the Constitution of the Republic of South Africa Bill, 1993 states that:

> "The Plenary of the Multi-Party Negotiating Process has agreed to the contents of the above-mentioned Bill, which provides a new Constitution for the Republic of South Africa. The Constitution makes provision for, inter alia, the following:
>
> (a) A common South African citizenship for all South Africans;
>
> (b) The creation of a sovereign and democratic constitutional State;
>
> (c) Equality between men and women and people of all races;
>
> (d) A justiciable Bill of Fundamental Rights;
>
> (e) A Parliament consisting of a National Assembly and a Senate;
>
> (f) A Government of National Unity;
>
> (g) Nine provinces, each having certain legislative and executive powers;

(h) A Constitutional Assembly to draft and adopt a final Constitution;

(i) An independent and impartial judiciary, which includes a Constitutional Court."

96. The Working Group finds the Memorandum to be an authentic body of principles and guidelines for the interpretation of the Interim Constitution which should represent the bottom line and starting point for any future changes of the Constitution.

97. Schedule 4 of the Interim Constitution, while dealing with constitutional principles, stresses, inter alia, fundamental rights, national unity, gender and racial equality, equality before the law, the separation of powers, multi-party democracy, universal adult suffrage, regular elections, proportional representation and a common roll.

98. Furthermore, reference is made in the Constitution to the acknowledgment, promotion and protection of the diversity of language and culture. The institution, status and role of indigenous law are recognized, protected and applied in courts, subject to the relevant Constitutional provisions and to legislation which deals with it specifically. This is in pursuance of the principle of democratic representation at each level of government. In the event of a dispute concerning legislative powers allocated by the Constitution concurrently to the national and the provincial Governments which can be resolved by a court, precedence is given to the legislative powers of the national Government. There is, furthermore, an express provision in schedule 4 which states that there shall be an efficient, non-partisan and career-oriented public service and that members of the security forces (police, military and intelligence) are required to perform their functions and exercise their powers in the national interest and are prohibited from furthering or prejudicing party political interests.

VIII. CONCLUDING REMARKS

99. The Working Group has come to the conclusion that after the elections of April 1994, the new political atmosphere and the Interim Constitution represent a positive and viable ground for democratic development of the Republic of South Africa and for the protection of human rights in conformity with the relevant international standards.

100. Political and constitutional changes have been followed by a commitment on the part of all decision makers to the idea of compromise and national unity. The importance of compromise and a cautious approach to the shaping of the new legal order and to implementing the new social policy was expressed equally strongly by government representatives, police officers, representatives of non-governmental human rights bodies and individuals alike.

101. The Working Group has noted that the various non-governmental organizations active in the field of human rights, among others Lawyers for Human Rights, the Human Rights Committee and the Independent Board of Inquiry, as well as Church organizations which have been active in the field of human rights, continue to work with the relevant ministries of the Government, a

sign which bodes well for the future. The efforts of the new Government to involve the civil society generally as well as those particularly concerned with the new policies under discussion are very encouraging. The damage of apartheid will require a considerable period of time to repair and the non-governmental organizations which existed before, in addition to those formed more recently, have a very important part to play in this regard.

102. Many government officials and representatives of non-governmental organizations expressed appreciation of the important rôle of the United Nations in its support for the anti-apartheid struggle in the past and valued the work of the Working Group. They expressed the hope that an appropriate form of cooperation and assistance in promoting human rights in South Africa would continue in the new circumstances.

IX. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

103. The Working Group believes that after the elections of April 1994, the new political atmosphere and the Interim Constitution represent a positive and viable environment for democratic development of the Republic of South Africa and for the protection of human rights in conformity with the relevant international standards.

104. The Working Group has noted with interest the commitment of all decision makers to the idea of compromise and national unity. The importance of compromise and a cautious approach to the shaping of the new legal order and to implementing the new social policy was expressed equally strongly by government representatives, representatives of non-governmental human rights bodies and individuals alike during the course of the field mission undertaken by the Working Group in South Africa.

105. Since the non-racial multi-party democratic elections, significant political changes have taken place in South Africa. However, it would appear that so far as the right to life is concerned, lack of respect for life, in the form of violent killings, continues and the crime rate has risen. According to information received, politically motivated killings seem to have decreased but deaths in police custody appear to continue.

106. The question of the abolition of the death penalty remains unresolved. However, it would appear that there is a majority view in Parliament in favour of its abolition. According to the latest figures received, there are more than 500 persons on death row in South Africa.

107. The system of legal representation of accused persons appears to be inadequate. Due to the problem of language and a lack of knowledge of the judicial procedures, it would appear that very often defendants' rights to fair trial have been put in jeopardy.

108. The question of what constitutes a political prisoner is not yet resolved although Professor Norgaard's recommendations have been accepted as guidelines. The final resolution of this question is linked to the broader

question of amnesty for persons suspected to have committed atrocities during the apartheid era and is due to be considered by the Truth and Reconciliation Commission.

109. The Working Group has noted that the 270 persons who where detained earlier this year without being charged were either released or charged by 15 May 1994 and no cases of preventive detention were reported to the Working Group between May and October 1994.

110. The discovery of torture instruments at the police station at Vanderbijlpark a week after elections took place in South Africa corroborates the longstanding allegations by suspects who were taken into custody. It is noted with great concern that persons in custody were being tortured even during the election period. The practice of torture is particularly acute in the Vaal Triangle and Pretoria.

111. The Working Group visited three prisons and three police stations. It would appear that 97 per cent of the prison population is black. Furthermore, as a result of the continuation of the old structures, the prison personnel is essentially the same. During their visits to prisons it became clear that there was a need to ameliorate prison conditions. In spite of some improvements and efforts being made by the Correctional Services, the Group found serious shortcomings. There is an urgent need for regular and better medical care, better diet and more accessible recreational activities for the prisoners. On a more general level, the lack of transparency in introducing new measures, tolerance of irregularities by warders and the lack of adequate communication between prison authorities and prisoners leaves prisoners in limbo and makes them vulnerable and unprepared for the process of resocialization. The lack of timely information on the amnesty procedure resulted in unrest among prisoners and violent measures were taken to suppress the unrest. The Working Group noted that a Commission of Inquiry has been set up to look into prison unrest.

112. President Mandela granted a six-month remission of sentence to all prisoners. The Working Group noted that this resulted in the release of 12,000 prisoners and contributed to alleviating congestion in South African prisons.

113. In connection with the question of forced removals in early November 1994, legislation was enacted for the restitution of land rights under which a Land Claims Court has been established. This legislation is aimed at redressing the rights of those who were forcibly removed from their land under the Land Act of 1913 and subsequent legislation relating to forced removals. The Working Group noted this development with interest.

114. The Working Group welcomes the statement of the new Government that respect for human rights and the improvement of the socio-economic conditions of the people of South Africa are the two cornerstones of its policy perspectives.

115. Apartheid is no longer practised in hospitals. However, the location of hospitals is such that access is not afforded to all in an equitable manner. This situation, a consequence of the apartheid system, remains largely

unchanged. The Working Group welcomes the announcement made by President Mandela that free medical care will be given to pregnant women and children under six years and that 870 clinics will be constructed in the next four years, especially in the rural areas and townships. That decision goes some way towards ameliorating the situation regarding medical care.

116. The greatest disparity exists in the health sector. As regards the enjoyment of economic, social and cultural rights, the Group noted from its contacts with South African officials the expressed will of their Government to do everything possible to observe human rights in general. Pending an improvement in the situation, the Group noted that 77 per cent of the population of South Africa did not have health insurance coverage; the minority who do consume 47 per cent of the total current financial resources available for health care.

117. The labour laws applicable to educators, farm workers, domestic workers, workers in the public service and mine workers are not yet dealt with adequately. There are an estimated 60,000 commercial farms in South Africa. The situation of farm workers remains a major concern. For example, the basic rights of farm workers to freedom of association and minimum wages for domestic workers are not yet guaranteed. This situation is the reason for the large number of strikes which are occurring at present in the country. No mechanisms for reconciliation or peaceful resolution of conflicts in the field of labour disputes exist. With a view to remedying the situation, a tripartite ministerial committee comprised of representatives of the Government, employers and workers was set up in September 1994. The Working Group has been informed that a bill will be passed at the beginning of 1995 following a public debate.

118. The Group noted with satisfaction that during the International Labour Conference held in June 1994, South Africa expressed the intention to ratify ILO Convention Nos. 87 and 98 relating to freedom of association and the right to bargain collectively, as well as No. 144 on the tripartite structure and No. 138 on the minimum age of workers.

119. In the field of education, there has been no change since the new Government came into power. A change is envisaged in the beginning of 1995, when separate departments will be unified into a single system of education. The Working Group has been informed that the white paper will be tabled in Parliament in early 1995.

120. The Working Group expresses its appreciation for the vital role played by the South African non-governmental organizations and for the constant support given by them to the Working Group in the struggle against apartheid. It hopes that they will continue their work in promoting human rights and rebuilding the civil society in the country.

121. The Working Group also notes that the newly elected Government has so far signed three important United Nations instruments on human rights, namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

122. The Working Group believes that the process of eliminating apartheid in South Africa is irreversible and that the future generations of South Africans will finally be given the opportunity to live in a society which is free from racism. However, the legacy of apartheid leaves South Africa's stability and peace vulnerable and the threat of occasional eruptions of violence is a part of everyday reality in South African society. Under these circumstances, the new Government has the challenging task to provide for safeguards and guarantees for human rights, based on the rule of law.

123. The Working Group welcomes the abrogation of apartheid laws under the Interim Constitution. It welcomes the sections dealing with fundamental human rights which correspond to a large extent to the International Covenant on Civil and Political Rights, and are binding at all levels of government. The Interim Constitution contains a wide range of political and legal safeguards for human rights. The Memorandum on the Objects of the Constitution prescribes the principles which are already enacted in the Interim Constitution. The institution, status and role of indigenous law are recognized, protected and applied in courts. The Interim Constitution therefore provides a positive and vital basis for the protection of human rights and the development of a democratic society.

B. General recommendations

124. Since the legacy of apartheid is still present, it is necessary to undertake all lawful measures in order to create conditions in which the existing government personnel would either adapt to the requirements of a non-racial and democratic political system or be replaced. An elaborate scheme to educate a new generation of civil servants and to re-educate the existing public administration personnel should be developed, inter alia with the contribution of the programme and advisory services and technical assistance of the United Nations Centre for Human Rights. Particular attention should be given to retraining of security forces in order to make them a part of the community, committed to serve all citizens regardless of race or social status.

125. The Working Group recommends that capital punishment be abolished. Furthermore, the death sentences already pronounced but not carried out and the sentences pronounced under the apartheid regime should be commuted.

126. The political amnesty should be respected without discrimination. All South Africans abroad who left the country due to the apartheid policy should be invited to return to their country in safety and dignity. Persons who were condemned, detained or convicted for political reasons under the apartheid regime should be given the opportunity to have their cases heard by the Truth and Reconciliation Commission.

127. Prisoners on remand should be held in conformity with international human rights instruments. The United Nations Standard Minimum Rules for the Treatment of Prisoners should be strictly respected.

128. The Working Group believes that special attention should be given to the training and re-education of prison staff with a view to further enhancing prisoners' confidence in them and to making them generally more respectful of

human rights as well as of international standards on the treatment of prisoners. This is intended to facilitate the social reintegration of prisoners.

129. The implementation of the restitution of land laws should be a priority objective.

130. In order to ensure full respect of trade union rights in all sectors, it is recommended that legal institutions for reconciliation of labour disputes should be created and measures should be taken to ensure that they are used.

131. In the field of education the international community should be invited to show solidarity with the people of South Africa in establishing new schools and improving other relevant facilities. The international community should also be invited to offer the appropriate expertise in the Government's efforts to revise the educational curricula and existing textbooks, which have been inherited from the apartheid era.

132. It is in the national interest to erase rapidly the popular image of the police as an instrument of repression. It is also important to include in the security services members of other sectors of the South African population who had been barred from such service by the former apartheid regime.

133. Since there is a great disparity in the provision of health care between the private and the public sector, the total health care expenditure should be adjusted to ensure a non-discriminatory general social security system.

134. All efforts should be undertaken to safeguard the rights of farm workers and domestic workers and to provide them with the health and educational facilities which other sectors of the population enjoy.

135. It is the belief of the Working Group that the international community, which campaigned against apartheid for half a century, should support the Government of National Unity in its endeavours to promote the new values suppressed by apartheid. Political tolerance, a human rights culture, non-discrimination and a just social policy are to be developed and supported by the world community.

136. Furthermore, the international community should cooperate with the South African Government in the implementation of policies in the field of education and technical training, including affirmative action, which are designed to give preference to the formerly underprivileged.

137. The Government of South Africa should be encouraged to adhere to all human rights instruments of the United Nations and in particular those relating to conciliation procedures.

C. Special recommendation

138. The Ad Hoc Working Group of Experts on southern Africa, considering the particular history of South Africa, which was dominated by the institutionalized system of apartheid, the consequences of which are difficult to eradicate overnight through the simple establishment of democratic

institutions, considering the imperative need to support the people of South Africa in their efforts to eradicate completely the legacy of apartheid in all walks of life, especially during the transitional period which comes to an end in 1999, given the importance of offering assistance to the people of South Africa by the international community in order to help them to live a harmonious life in a new non-racial society which values democratic principles, in view of the progress which has been achieved in South Africa after free elections, bearing in mind the view expressed by the officials of the Government of South Africa and representatives of non-governmental organizations during its mission to South Africa in August 1994 that the Group should continue its activities in the field of human rights in order to help the new Government of South Africa, and keeping in mind the complexity of the transitional period from apartheid to a genuine non-racial and democratic society, requests the Commission on Human Rights to consider the establishment of a mechanism composed of independent experts who would work closely with the South African authorities and organizations in the field of human rights on the one hand and with the High Commissioner for Human Rights on the other hand to assist and help them to strengthen the national structures for the protection and promotion of human rights and thus to participate in the progressive establishment of a democratic culture and traditions during the period of transition, without in any way denying the Government of South Africa the initiative in defining any other framework for consultations with the United Nations that it deems fit. The mechanism thus conceived should, in carrying out its duties, which will be determined subject to consultations with the Government of South Africa, report on its activities to the Commission on Human Rights.

Notes

1/ The Working Group has been informed that after public hearings in respect of 24 nominees to the Constitutional Court in October 1994, 6 judges were appointed, in addition to the 5 already appointed, thus completing the formation of the 11-member Court.

2/ According to information received, the Human Rights Commission Bill was revised and discussed in Parliament during October 1994 after taking into consideration comments received from several human rights organizations.

3/ According to information received, draft legislation providing for the Commission for Truth and Reconciliation was published in October 1994.

4/ According to information received, the Government of South Africa joined SADCC on 29 August 1994.

Annex I

RESULTS OF THE ELECTIONS

I. POLITICAL PARTIES

The following political parties contested the elections:

1. African Christian Democratic Party (ACDP)
2. African Democratic Party (ADP) led by former Ciskei military ruler Brigadier Oupa Gqozo
3. African Moderate Congress (AMC)
4. African Muslim Party (AMP)
5. African National Congress (ANC)
6. Democratic Party (DP)
7. Dikwankwetla Party
8. Federal Party
9. Freedom Front (FF)
10. Inkatha Freedom Party (IFP)
11. Islamic Party
12. Keep it Straight and Simple Party
13. Luso - South Africa Party (LUSAP)
14. Minority Front (MF)
15. National Party (NP)
16. Northwest Democrats
17. Pan Africanist Congress (PAC)
18. Soccer Party
19. South African Communist Party (SACP)
20. South African Women's Party
21. Women's Rights for Peace Party
22. Workers List Party
23. Workers International to Rebuild the Fourth International Party

The following parties refrained from participating in the elections:

1. The Azanian People's Organization
2. The Black Consciousness Movement
3. Conservative Party (CP)
4. Afrikaner Volksfront (AV)

II. DISTRIBUTION OF SEATS

Seven parties won seats in the 400-member National Assembly, distributed as follows according to the percentage of the vote each party received:

ANC	252
NP	82
IFP	43
FF	9
DP	7
PAC	5
ACDP	2

III. DISTRIBUTION OF VOTES BY PROVINCE

South Africa is divided into nine provinces. The ANC won the following seven provinces: PWV, Eastern Cape, Northern Cape, Eastern Transvaal, Northern Transvaal, North West, Orange Free State. The National Party won the Western Cape. The Inkatha Freedom Party won KwaZulu/Natal.

IV. COMPOSITION OF THE NEW SOUTH AFRICAN GOVERNMENT

The following members of the Government were appointed on 12 July 1994:

President: Nelson Rolihlahla Mandela

First Deputy President: Thabo Mbeki

Second Deputy President: F.W. De Klerk

Minister of Agriculture: Kraai van Niekerk

Minister of Arts, Culture, Science and Technology: Ben Nguabane

Minister of Correctional Services: Sipho Mzimela

Minister of Defence: Joe Modise

Minister of Education: Sibusiso Bhengu

Minister of Environment Affairs: Dawie de Villiers

Minister of Finance: C. Liebenberg

Minister of Foreign Affairs: Alfred Nzo

Minister of Health: Nkozasana Diamini Zuma

Minister of Housing and Welfare: Joe Slovo

Minister of Justice: Dullah Omar

Minister of Labour: Ti'to Mboweni

Minister of Land Affairs: Derek Hanekom

Minister of Mineral and Energy Affairs: Roelof F. Botha

Minister of Post, Telecommunications and Broadcasting: Pallo Jordan

Minister of Provincial Affairs and Constitutional Development: Roelf Meyer

Minister of Public Enterprises: Stella Sigcau

Minister of Public Services and Administration: Zola Skweyiya

Minister of Public Works: Jeff Radebe

Minister of Safety and Security: Sydney Mufamadi

Minister of Sport: Steve Tshwete

Minister of Trade, Industry and Tourism: Trevor Manuel

Minister of Transport: Mac Maharaj

Minister of Water Affairs and Forestry: Kader Asmal

Minister of Welfare and Population Development: Abe Williams

Minister Without Portfolio: Jay Naidoo

Speaker of Parliament: Frene Ginwala

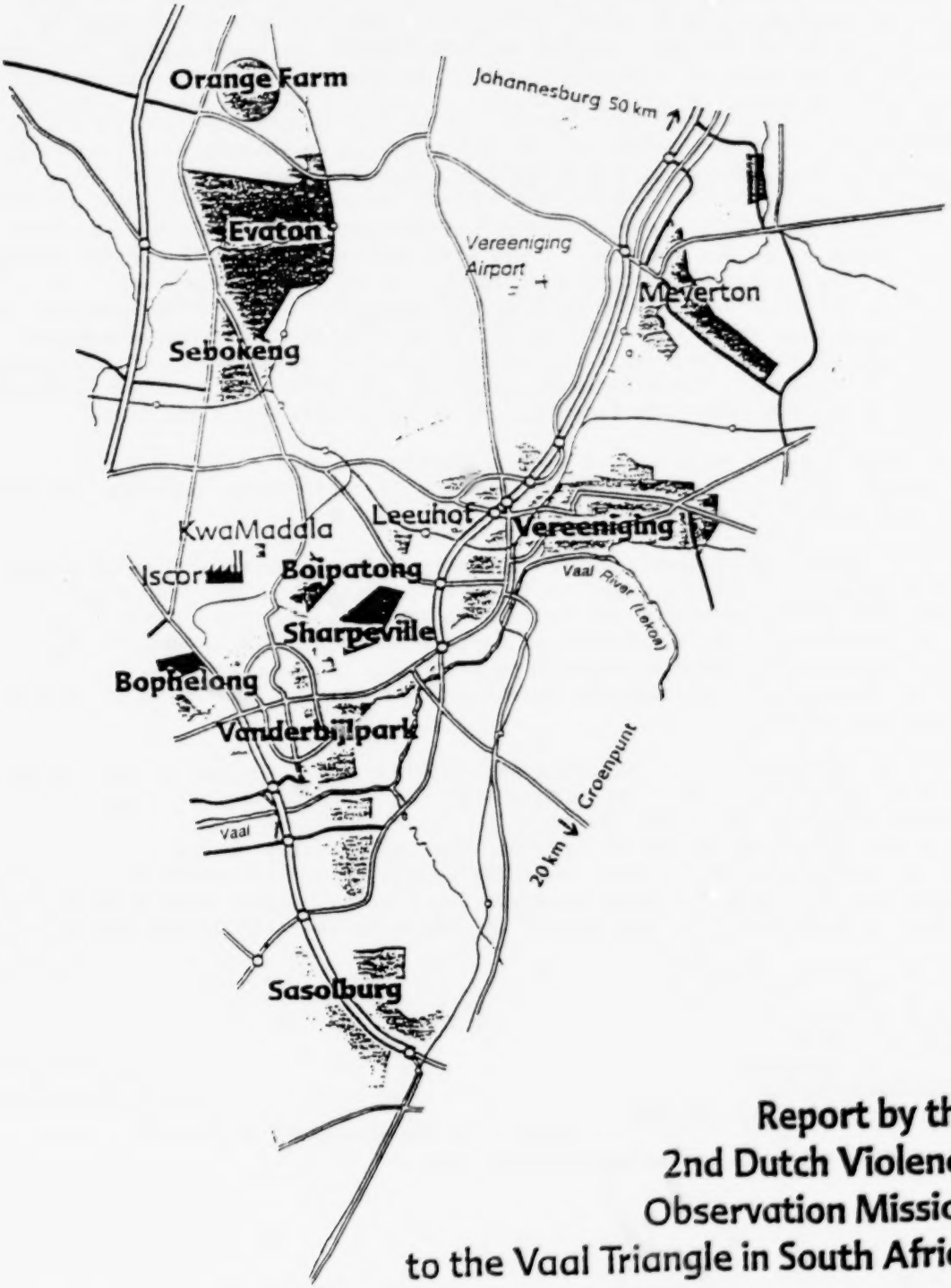
President of the Senate: Kobie Coetsee

Chairman of the Constituent Assembly: Cyril Ramaphosa

Annex II

SHOCKING MORALS

THE VAAL REVISITED



Report by the
2nd Dutch Violence
Observation Mission
to the Vaal Triangle in South Africa

"133. On the evening of April 28, the last voting day in the Vaal, the delegation was informed about shooting in Vietnam and went there to investigate. The hostel looked deserted. Later it was learned that ANC marshals had told men in a shebeen* that they should go and cast their votes. The marshals had been stabbed by the shebeen owner who then was shot dead. Subsequently the shooting had escalated and by April 30 the death toll had risen to six. Ntandazeli Fose was suspected of having participated in the killings. On May 4 he had to appear in the Vereeniging Magistrate's Court where he told the delegation that on May 2 a casspir** and a passenger car had arrived at his Sebokeng house. He was arrested and made to get into the casspir, which drove to a police station. Before he got out he was handcuffed and a balaclava was put over his head. In the cells he was beaten over his whole body.

"134. Fose's statement, as taken by the delegation, continued:

> *'In a kind of courtyard of this police station - it did not look like an ordinary police station - I saw a bar on the left, in a kind of garage. On that same left side I was led through another garage door. There I saw a lawnmower, a kind of tractor. Inside they put a blanket over my head that was tied around me with a wire or belt. I couldn't see anything. I then was electroshocked through electrical wire fastened to my big toes. The electrical wire was also connected with the upper part of my back under the blanket. It hurt terribly and I cried out.'*

Fose added that he believed the electroshocking to have lasted about 1.5 hours. Both his big toes showed small dark spots where the wire had been fastened according to Fose.

"135. A delegation member recalled recently having visited a place fitting Fose's description of the scene of the torture: the courtyard with garage boxes, bar and lawnmower at the villa like premises of the Riot and Crime Investigation Unit (RCIU), headed by Captain Havenga. The delegation went to IIU*** Major Van Niekerk who agreed to accompany them to the RCIU. Captain Havenga was persuaded to show his South African and Dutch colleagues around the villa.

"136. In room number 19 a mattress was found on the floor and an open sleeping bag with two ropes. The captain said that the sleeping bag was used by the nightwatchman and the ropes for tying up the sleeping bag, The delegation expressed doubts and asked why the watchman had not cleared the room. This was not explained. After more rooms the garage boxes were inspected. The second one contained two small tractors for lawnmowing and, most prominently, a chair with black belts reminiscent of safety belts. The delegation asked

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* Beerhall.

** Armoured vehicle.

*** Internal Investigation Unit (SAP).

for what purpose the chair was used. 'By the watchman', said the captain who could not explain the belts and two more ropes; the pink blanket and TL armature were for the watchman again.

"137. In a corner the delegation then detected a bag with camouflage colours. It proved quite heavy and contained a machine with two electrical wires, subsequently referred to as the 'pencil sharpener'. Everyone present immediately understood that the electroshocking machine had been found. Major Niekerk seized the machine and all other relevant objects. They were later photographed by the delegation (see back cover) and the machine was tested by the major and the delegation. It worked: even if turned slowly it produced nasty shocks.

"138. On May 5, 'Liberation Day' in The Netherlands, the police took statements from the delegation. The IBI issued a press release on the torture equipment. Advocate Jan Munnik, Police Reporting Officer (PRO) in the PWV, was informed by the delegation of the discovery and of the decision of General Wessels in Pretoria to transfer the case from the IIU to a Colonel Serfontein of the CIU****.

"139. Brigadier Mostert did not display great interest in the matter. He expressed satisfaction about the involvement of the IIU."

**** Complaints Investigation Unit (SAP).